

REVISED (Changes in Bold in Memo and in Attachments 1 and 3)

**OFFICE OF THE GENERAL COUNSEL
Division of Operations Management**

MEMORANDUM OM-03-18

January 13, 2003

TO: All Regional Directors, Officers-in-Charge,
And Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Procedures for Handling Postal Service Cases Involving Refusal to
Supply Information and Procedures for Addressing Conduct Covered by
Outstanding Court Judgments

This memorandum advises the Regions of (A) certain initiatives being implemented by the United States Postal Service concerning union information requests and new procedures and revised guidelines for Regions to deal with refusal-to-provide-information charges.¹ It also reminds Regions of (B) the procedures for addressing conduct covered by outstanding court judgments.

A. Initiatives Implemented by the USPS and New Procedures and Guidelines for the Regions

The formulation of the initiatives, procedures and guidelines concerning USPS refusal-to-provide-information cases follows a review and analysis by Region 6 and the Division of Operations-Management of such pending cases and discussions with both the USPS and the American Postal Workers Union. We found that the volume of these refusal-to-provide-information charges differs from Region to Region. Some Regions have an inordinate, recurring intake of these charges, despite efforts under the now-terminated 1997 Memorandum of Understanding between the parties. In virtually all these recurring cases, while the information sought is ultimately supplied, the delays in providing it have been substantial. These delays diminish the utility of the information provided, given the short grievance handling times in the collective bargaining agreement. On the other hand, some Regions report few cases, prompt resolutions of these cases, and very little indication of recidivism at the individual facilities or districts.

We have met with the USPS General Counsel, her chief counsel for labor law, and the USPS outside counsel on these cases, regarding recurring charges alleging the USPS' refusal to provide information. They correctly noted that the USPS with

¹ This memorandum does not address the refusal-to-provide-information cases covered by the outstanding complaint in United States Postal Service, Case 5-CA-27954(P), et al.

900,000 employees is the largest employer under our jurisdiction and it annually responds to tens of thousands of information requests. However, they share our concerns that, in the future, all information requests should receive prompt and responsive replies, without the necessity of unfair labor practice charges being filed, and that any charges filed should be promptly and satisfactorily resolved. In this regard, the USPS has committed to undertake a number of initiatives to improve its response to information requests and to unfair labor practice charges. In turn, we have agreed to modify certain Regional Office procedures to facilitate the processing of such charges.

USPS Initiatives

The USPS has made a commitment to enhance its training program for managers and supervisors with respect to the duty to expeditiously supply information that is relevant and necessary for collective bargaining, and to underscore that unprivileged refusals to supply information will not be tolerated. The USPS has committed that once its labor law offices receive a faxed unfair labor practice charge, they will accord the matter much higher priority than in the past. If the charge appears to have merit, the USPS will endeavor to resolve it within 14 calendar days or less, without any further communication from a Board agent. The USPS has also agreed that even after an unfair labor practice charge is filed, representatives of the Local USPS office will continue to consider the request for information, particularly where they recognize that the information should have previously been provided. Accordingly, under these procedures, obvious violations should be promptly resolved and no longer result in substantial delay before the information sought is actually provided.

Regional Office Procedures and Guidelines

In an effort to facilitate compliance with the Act, new pre-filing assistance and new procedures and guidelines for processing USPS refusal-to-provide-information cases should immediately be implemented in all Regional Offices. These new procedures and guidelines are set forth below.

Procedures

When a Region provides pre-filing assistance, it should insure that the unfair labor practice charge contains specific information concerning: 1) the identity of the requester; 2) the person to whom the request was directed; 3) whether the request was oral or in writing; 4) a description of the requested information sought that has not been provided; and 5) the general proffered reason for the request (e.g., contract administration, grievance processing or collective bargaining). If the request is in writing and available to the Region, it should also be faxed to the USPS along with the charge. If unfair labor practice charges are filed without the Region's pre-filing assistance, it will promptly seek an amendment of the charges to add the information listed above, unless the charge is already reasonably clear or the additional

information can easily be provided by telephone. The Region will also fax the unfair labor practice charges to the appropriate USPS labor law office. A list of the fax numbers and areas served by each USPS labor law office is attached to this memorandum as Attachment 1.

Guidelines

We are hopeful that the USPS' renewed promise to both comply with its statutory obligation in this area and to promptly resolve those charges that are filed will succeed where previous efforts have failed. In the meantime, we must handle, in a consistent and effective manner, the cases that are currently on file and those that are yet to come.

In light of our past experience with the USPS, we have determined to modify the procedures outlined in OM 01-91, issued September 25, 2001, for handling these cases filed by APWU. Further, we have concluded that charges alleging refusal-to-provide-information filed by other postal unions should be treated the same since they involve the same employer. Accordingly, the Regions are to process all pending and future refusal-to-provide-information cases filed against the USPS as follows:

- (1) Regional Offices should follow the usual policy of increasing the formality required for the resolution of cases with successive unfair labor practice charges involving the same issue with the same employer, even if different facilities are involved.² This policy does not apply where the Region in its discretion concludes that the USPS has satisfactorily complied with the 14-calendar day commitment to resolve the information dispute and has extended any time limits on the filing or processing of grievances as appropriate. In such cases, the Regions should accept adjusted withdrawals unless the Region sees a pattern of postponing compliance with the Act until unfair labor practice charges are filed.³
- (2) As to charges that are not voluntarily resolved by the USPS within 14 days after filing, it is inappropriate, absent special circumstances, to continue to accept adjusted withdrawals in recurring meritorious cases involving refusal-to-provide-information conduct. Several Regions have already crossed this threshold with the USPS and the remaining Regions when faced with such recurring

² In making this determination, Regions should note whether the recurring violations are in the same USPS administrative district. A list of USPS administrative districts is attached as Attachment 2. If the violations recur in the same district, a smaller number of violations may trigger the next step of formality than if they recurred in different districts.

³ Regions should not accept adjusted withdrawals in cases involving conduct potentially violating provisions of outstanding court judgments against the USPS, see Attachment 3, without first contacting Acting Assistant General Counsel Stanley Zirkin or Deputy Assistant General Counsel Ken Shapiro of the Contempt Litigation and Compliance Branch. That Branch may want to consider pursuing contempt action on the conduct.

meritorious charges should now decline to accept any further withdrawals or informal adjustments.

- (3) Where the USPS has resolved by adjusted withdrawals recurring meritorious refusal-to-provide-information charges filed with the same Region, particularly involving the same USPS administrative district, Regions should resolve subsequent cases only by informal settlements, first with, and then without, non-admission clauses. Continued violations should be resolved by formal settlements, even if litigation is the only other alternative.
- (4) In all settlement agreements, whether informal or formal, Regions should include language stating, "the Respondent agrees that this settlement stipulation may be used in any proceeding before the Board or an appropriate court to show proclivity to violate the Act for purposes of determining an appropriate remedy."

If a Region concludes that departure from the above guidelines is warranted because of special circumstances, it should first consult with Director Gerald Kobell of Region 6, prior to taking any action.⁴

Region 6 will continue to coordinate and monitor processing of USPS refusal-to-provide-information cases. Region 6 will also consider whether consolidation or clustering of cases for trial or seeking remedial relief on a wider basis is appropriate. In order to maintain oversight of these cases, each Region should send Region 6 copies of dispositions (withdrawal approval letters, settlement agreements, draft complaints, and ALJDs) in all refusal-to-provide-information cases filed against the USPS.

In addition, please be careful to input all data regarding these cases, timely and accurately, into the CATS system. Such data will help us monitor the volume of activity as to these refusal-to-provide-information charges. The naming convention for all cases involving the USPS should be United States Postal Service. Be sure to specify that the case includes a refusal-to-provide-information allegation.

As with all charges that are transferred pursuant to the Interregional Assistance Program (IRAP), refusal-to-provide-information cases filed against the USPS should not be transferred if it appears that the charge is meritorious. We understand that it is difficult to determine simply from the face of a charge whether a charge will have merit, but past case activity may be helpful in making a preliminary determination. In any event, if a refusal-to-provide-information case is transferred pursuant to IRAP and is found to have merit, the case should be returned to the sending Region for further processing, including approval of an adjusted withdrawal or settlement.

⁴ Special circumstances could be, for example, that the recurring charges arose in facilities a great distance from each other, although still in the same NLRB Region.

(B) Procedures for Addressing Conduct Covered by Outstanding Court Judgments

Standard procedure in all cases involving conduct violating negative or affirmative provisions of outstanding court judgments requires that the investigating Region refer such cases to the Contempt Litigation and Compliance Branch, prior to taking any final action.⁵ See Casehandling Manual – Compliance, Section 10592. We have learned that some Regions have taken action in cases against the USPS, without following these procedures.

In order to assist Regions in complying with these requirements, attached to this memorandum are lists of outstanding court judgments against the USPS (Attachments 3 and 4). Attachment 3 lists court judgments involving refusal-to-provide-information violations. **Prior to taking any final action on cases involving the violation of any provision(s) of these court judgments involving refusal-to-provide-information violations, Regions should contact the Contempt Litigation and Compliance Branch.**⁶

Attachment 4 lists court judgments against the USPS involving violations of Sections 8(a)(1), (3) and (4) other than refusal-to-provide-information.⁷ **For any cases involving conduct, which may be violative of court judgments against the USPS in other than refusal-to-provide-information cases, Regions should investigate such cases and if a Region determines that the charge has merit, the Region should submit the case to the Contempt Litigation and Compliance Branch to determine whether contempt proceedings are appropriate. When submitting the case to Contempt Litigation and Compliance Branch, the Region should include a memorandum summarizing the results of the investigation and the Region's analysis of the merits and including a recommendation as to whether the initiation of contempt proceedings would be appropriate.**

If you have any questions concerning this memorandum, please contact Regional Director Gerald Kobell or Deputy Assistant General Counsel Jane Schnabel. Questions concerning possible contempt action should be directed to Acting Assistant

⁵ "Final action" includes dismissal, issuance of complaint, solicitation or approval of any type of settlement including "non-Board adjustments," or Collyer or any other type of deferral.

⁶ Regions are reminded that any refusal to furnish information would potentially violate the judgments listed in Attachment 3; that is, the information requested need not be identical or even similar to that which underlay the judgment.

⁷ Except for court judgment (4) on Attachment 4, each of the court judgments listed on both attachments relates only to the specific USPS location noted under the respective court judgment. However, as indicated, court judgment (4) on Attachment 4 contains nationwide cease and desist orders and notice provisions relating to Weingarten violations.

General Counsel Stanley Zirkin or Deputy Assistant General Counsel Ken Shapiro of the Contempt Litigation and Compliance Branch.

/s/
R. A. S.

cc: NLRBU
Attachment

Release to Public

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